

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1110 OF 2005
WITH
CIVIL APPLICATION NO.1364 OF 2005

Solapur Zilla Kho-Kho Association ...Appellant

Versus

Maharashtra Kho-Kho Association

& Anr. ...Respondents

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Mr.Rajiv Patil i/b Mr.Anand Kulkarni for Appellant.

Mr.A.L.Gore for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JUNE 7, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant materials on record.

2. Admit. Mr.Gore waives notice for Respondents.

3. As short question is involved, Appeal is taken up for final disposal forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the 2nd Ad-hoc Additional District Judge, Solapur dated October 26, 2005 below Exhibit 19 in RCS No.3 of 2005. The admitted facts as can be culled out from the record are that the Appellant/Plaintiff is a registered association and is affiliated as District Association of the Respondent No.1 State Level Association. The Respondent No.1 however, proceeded to affiliate Respondent No.2 Association as affiliated Association of Respondent No.1. That action of Respondent No.1 has been challenged by the Plaintiff in the Suit instituted before the Civil Judge, Senior Division, Solapur being RCS No.3 of 2005. Reliefs claimed in the Suit read thus :

"12. The Plaintiff, therefore, prays that:-

- A) The suit be decreed with costs;
- B) It be declared that granting of the

affiliation by defendant No.1 to defendant No.2 is illegal and void ab-initio;

C) It be further declared that plaintiff is only entitled to act as a representative of defendant No.1 for solapur district;

D) Other just and equitable orders be passed."

5. During the pendency of the said Suit, Appellant filed application for the interim relief and prayed as under :

"A) The application may kindly be allowed;

B) During the pendency of the suit the defendant No.2 be restrained from conducting any tournaments and representing as affiliated member of defendant No.1;

C) Other just and equitable orders be passed;

D) Necessary affidavit is filed."

6. Essentially three points were raised by the Plaintiff before the lower Court. The first contention was that the Respondent No.1 had no right to withdraw its affiliation unilaterally. Secondly, before withdrawal of affiliation, no

opportunity of being heard was given to the Plaintiff, for which reason, the action was in violation of the principles of natural justice and lastly, that the Defendant No.2 was admittedly an unregistered body, and no affiliation could be given to such unregistered body, inasmuch as it was obligatory to grant such affiliation only to registered association. All the three contentions have been negated by the Trial Court. The Trial Court by the impugned Judgment and Order has accordingly dismissed the application.

7. Having considered the rival submissions, I have no hesitation in taking the view that the conclusion reached by the Trial Court on all the three contentions, cannot be sustained, either on facts or in law.

8. As is mentioned earlier, it is not in dispute that affiliation was granted to Plaintiff Association in anterior point of time. The Plaintiff Association was conducting all the tournaments as District Level Affiliation of State Level Association/Respondent No.1. It is also not

in dispute that Defendant No.2 was not a registered body. It is also not in dispute that before granting affiliation to Respondent No.2, no notice whatsoever was given to the Plaintiff or no notice or opportunity of being heard was given to the Plaintiff. Indeed, there is no formal order of withdrawal of affiliation which has been placed on record either by the Plaintiff or by the Respondent No.1. The Plaintiff, however, proceeds on the assumption that the affiliation has been withdrawn, as the Plaintiff was not allowed to conduct District Level Tournament after affiliation was granted to Defendant No.2. On this basis, it is contended by the Plaintiff that the Respondent No.1 could not have withdrawn the affiliation granted to them unilaterally.

9. To get over this position, Counsel for the Respondent No.1 has placed reliance on Clause (11) of the constitution, particularly, note appended thereto, which provides that District member will be changed during the tenure of the term by the affiliated District Body after giving valid reasons. In my opinion, reliance placed on this

Regulation is totally misplaced. That is a provision authorising the District Association to change affiliation of District member which is affiliated to District body. Reliance is then placed on regulation 14, clause (g), which empowers the Governing Council of Respondent No.1 to take disciplinary action against affiliated Units, Clubs and Institutions or individuals for conduct subversive of the discipline and/or prejudicial to the interest of association. It is obvious that if this provision was to be invoked, it will entail in civil consequences. If it is so, no action can be proceeded by the Governing Council unilaterally. The Governing Council would be obliged to provide reasonable opportunity before such action is proposed.

10. In the present case, it is not in dispute that no opportunity was accorded to the Plaintiff. Indeed, the Governing Council which has granted affiliation, would also possess power to withdraw such affiliation. But while doing so, the Governing Council will have to observe the minimum basic principle of natural justice, which requires

that fair opportunity should be provided to the person who is likely to be affected by such adverse order. In my view, therefore, the Plaintiff ought to succeed on this reasoning alone.

11. There is yet another contention which has been rightly pressed into service on behalf of the Plaintiff. The affiliation which is granted to the Respondent No.2 at the relevant time, it is not in dispute that the said body was unregistered body. Rule 1A of the Bye-laws framed by the Respondent No.1 requires that affiliated District Association shall be registered under the Societies Registration Act, 1960 or Public Trust Act, 1956. The Trial Court has answered this issue by observing that this bye-law nowhere provides that the association should be registered in earlier point of time. This approach of the Trial Court cannot be countenanced in law. On plain reading of this bye-law, it presupposes that the Association which is to be affiliated by the Respondent No.1 State Level Association is already a registered body. Registration cannot be obtained *ex post facto*. It is not necessary for me to go into the

contested position as to whether the Respondent No.2 has been accorded registration by the concerned authority as the same is posterior to the date of affiliation. In other words, subsequent registration will not cure the inherent defect in the action of Respondent No.1 in according affiliation to Respondent No.2 at the point of time when it was not a registered body.

12. Counsel for the Respondent No.1 submits that after affiliation was accorded to the Respondent No.1, the Respondent No.2 has conducted at least two tournaments. That however, will make no difference to the point in issue. The fact remains that the decision of the Respondent No.1 whether to be considered plainly as act of granting affiliation to Respondent No.2 or implicit withdrawal of affiliation of the Plaintiff, cannot be sustained in law.

13. Viewed thus, the order of the Trial Court rejecting the application for interim relief preferred by the Plaintiff as passed, cannot be sustained. The same is, therefore, set-aside.

Instead, the application preferred by the Plaintiff Exhibit 19 is allowed.

14. Having regard to the nature of controversy involved, it will be appropriate if the Trial Court decides the Suit expeditiously. The parties appearing through Counsel have assured this Court that they will extend necessary cooperation to the Trial Court for early disposal of the Suit. That assurance is accepted.

15. It is also made clear that the Trial Court will proceed to decide the Suit on its own merits in accordance with law. Any observations made in this order shall not influence the final decision to be arrived at by the Trial Court on the basis of materials before it. All questions are left open.

16. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.